IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

144596

CERRO COPPER PRODUCTS CO.,

Plaintiff,

Civil Action No.

v.

92-CV-204-WDS

MONSANTO COMPANY,

Defendant.

DEFENDANT'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR A PROTECTIVE ORDER

BACKGROUND

Since August, 1993, Plaintiff Cerro Copper Products Co. (hereinafter "Cerro") and Defendant Monsanto Company ("Monsanto") have been engaged in producing documents and other information responsive to each other's discovery requests in this litigation. Pursuant to this Court's July 21, 1993 Order, the discovery cutoff date in this litigation is September 1, 1994.

Recently Cerro has given Monsanto notice ("Notice") of
Cerro's intent to take four depositions of Monsanto pursuant to
Rule 30(b)(6) of the Federal Rules of Civil Procedure. The
depositions are currently scheduled to take place on February 16,
17, 24, and 25, 1994, respectfully. Despite the fact that
Monsanto is still in the process of producing documents
responsive to Cerro's extensive document production requests and
Cerro has apparently failed to fully produce several categories
of responsive documents (see letter attached hereto as Exhibit
A), Cerro is insisting on proceeding with the depositions as
scheduled. Monsanto believes that Cerro's wish to take
depositions of Monsanto at this point in the discovery process

will be unduly burdensome and oppressive and will cause needless expense and delay because such depositions will have to be repeated following the production of additional documents.

Additionally, Rule 30(b)(6) of the Federal Rules requires

Cerro to "describe with reasonable particularity the matters on
which examination is requested." Despite Cerro's obligation to
describe the subjects of deposition with "reasonable
particularity", Cerro's Notices request testimony concerning
matters not at issue in this litigation and for a period of time
in excess of 80 years. Despite Monsanto's request and
suggestions for reasonable limitations to Cerro's Notices (see
letter attached hereto as Exhibit B), Cerro continues to pursue
Monsanto's deposition based upon the overbroad subjects set forth
in Cerro's Notices. Monsanto therefore requests the Court to
enter a protective order rescheduling the depositions and setting
reasonable limitations upon the subjects set forth in the
Notices.

ARGUMENT

A. Cerro's Request to Depose Monsanto at This Point in the Discovery Process is a Waste of Judicial Resources and Will Unnecessarily Delay This Litigation.

To date, Monsanto has on three different occasions produced thousands of pages of documents responsive to Cerro's discovery requests. In responding to Cerro's extensive discovery, Monsanto has spent in excess of \$75,000 in attorney's fees, and a review team has spent thousands of hours reviewing well over one million pages of potentially responsive documents and interviewing in

excess of twenty-five past and present Monsanto employees.

Despite Monsanto's extensive efforts to fully respond to Cerro's discovery, Monsanto has not yet completed the copying and production of its responsive documents. Monsanto will produce the majority of its remaining responsive documents for Cerro's review on or before February 21, 1994. Monsanto anticipates that its production on February 21 will approximately double the total number of documents produced to date.

To date, Cerro has also produced documents to Monsanto on three different occasions in this litigation. Unlike Monsanto, the vast majority of documents that Cerro has produced were not even remotely responsive to Monsanto's requests. Additionally it appears that Cerro has failed to produce numerous categories of responsive documents. See Exhibit A.

Federal Rule of Civil Procedure 26(c) provides:

Upon motion by a party or by the person from whom discovery is sought, and for a good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;...
- (4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters . . .

Because both Cerro and Monsanto have not yet fully produced responsive documents, the discovery cut-off date is in excess of

six months away, and Monsanto anticipates producing the majority of its responsive documents in less than ten days, Monsanto requests this Court enter a protective order pursuant to Rule 26(c) delaying Monsanto's depositions until both parties have had an opportunity to produce additional documents. A reasonable delay in the taking of Monsanto's depositions until after the production of the majority of both parties' responsive documents will conserve judicial resources and save both parties time and money in the future because it is less likely that such depositions will have to be repeated. Monsanto's request is in keeping with the spirit of Rule 26, which one court has described as follows:

[t]he discovery system depends absolutely on good faith and common sense from counsel. . . [d]iscovery is expensive . . . counsel . . . must make a common sense determination, taking into account all the circumstances, that the information sought is of sufficient potential significance to justify the burden the discovery probe would impose, that the discovery tool selected is the most efficacious of the means that might be used to acquire the desired information (taking into account cost effectiveness and the nature of the information being sought), and that the timing of the probe is sensible, i.e., that there is no other juncture in the pre-trial when there would be a clearly happier balance between the benefit derived from and the burdens imposed by the particular discovery effort.

In re Convergent Technologies Securities Lit., 108 F.R.D. 328, 331 (N.D. Calif. 1985) (emphasis added). The most cost-effective time for taking the requested depositions in this litigation is following the production of the majority of responsive documents

by both parties. To do otherwise is a waste of judicial resources and unduly expensive and burdensome to both parties.

B. The Subject Matters Contained in Cerro's Notices are Overbroad and Violate the Mandates of Rule 30(b)(6) of the Federal Rules of Civil Procedure.

Rule 30(b)(6) of the Federal Rules of Civil Procedure states:

[A] party may in the party's notice and in the subpoena name as the deponent a public or private corporation or a partnership or association . . . and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, managing agents, or other persons who consent to testify in its behalf, and may set forth, for each person designated, the matters on which the person will testify. . . [T]he person so designated shall testify as to matters known or reasonably available to the organization.

(Emphasis added.) Despite Cerro's obligation to describe potential deponents with "reasonable particularity", Cerro's Notices request testimony from individuals concerning matters not at issue in this litigation and encompass a period of time in excess of 80 years. Despite Monsanto's repeated efforts, Cerro has continually resisted providing greater specificity concerning the subject matters contained within the Notices. See Exhibit B.

Monsanto therefore requests that the Court enter a protective order limiting the subject matters contained within Cerro's Notices. One fashion in which the Court could reasonably limit such Notices is to require the parties to provide copies of deposition exhibits to the corporate deponent at the time of

service of any Rule 30(b)(6) Notices. Such a requirement would minimize future disputes concerning the subjects to be covered in such Notices for either party, because the party deponent would produce individuals capable of testifying on the subjects contained within the deposition exhibits.

In addition to such a requirement, Monsanto requests the Court place reasonable limits on Cerro's Notices. Cerro's Rule 30(b)(6) Notice of Deposition ("Notice") requesting Monsanto's deposition on February 16 requests Monsanto to produce one or more individuals to testify concerning:

The manufacturing processes utilized by Monsanto at the W.G. Krummrich Plant for the period 1917 through 1990, including but not limited to the identity of the products that were manufactured, how these products were manufactured, the volume, amount, and identity of raw materials utilized in the manufacture of these products, and the volume and amount of finished product.

This designation is impossibly vague and overbroad. First, it covers manufacturing processes that did not involve any substances similar to those found in Dead Creek. To date, Monsanto has produced over 21,000 pages of Standard Manufacturing Process documents that did involve those substances. Some of those documents date back more than fifty years. No one living today is knowledgeable concerning many of these processes beyond what can be read in those documents. Pursuant to agreement between counsel, Monsanto has also produced summary documents that set forth recent volumes and amounts of raw materials used and products generated; again, Monsanto has no information

concerning those subjects beyond what is contained in those documents. Nevertheless, Monsanto can produce one or more individuals with general knowledge of Monsanto's recent manufacturing processes. The time period encompassed would be the time period of the memory of the individual(s) produced for deposition.

Cerro's Notice requesting Monsanto's deposition on February
17 requests Monsanto to produce one or more individuals to
testify concerning:

The design and operation of the combined sewer system at the W.G. Krummrich Plant and the 36" overflow pipe that led from Monsanto to Dead Creek Segment A.

Counsel for both parties have used the term "combined sewer system" to mean the Village of Sauget's sewer system which runs north of Dead Creek Segment A and receives effluent from Cerro, Monsanto, and other industrial and residential locations in the Village of Sauget. Applying this definition of the term "combined sewer system," Monsanto is unaware of a "combined sewer system at the W.G. Krummrich Plant." Additionally, Monsanto is aware of a 36" overflow pipe that led from the Village's combined sewer into Dead Creek Segment A; however, this 36" pipe was not directly connected to the W.G. Krummrich Plant's sewer system. Monsanto can produce one or more individuals with general knowledge of the W.G. Krummrich Plant's sewer system. The time period encompassed would be the time period of the memory of the individual(s) produced to be deposed.

Cerro's Notice requesting Monsanto's deposition on February 24 requests Monsanto to produce one or more individuals to testify concerning:

The investigation and/or study, and the results of the investigations and/or studies, of environmental conditions and/or contamination at the W.G. Krummrich Plant by hazardous substances that are similar or identical to those found during the clean-up of Dead Creek Segment A.

There are several problems with the subject matter of this

Notice. First, the Notice contains the term "Hazardous

substances." That term is not defined in the Notice. During the

August 18, 1993 good faith conference discussing Monsanto's

objections to Cerro's requests for production, counsel for both

parties tentatively agreed to define "Hazardous Substances" for

the purposes of Cerro's discovery to Monsanto to mean those

substances listed in both Exhibit A to Cerro's First Set of

Interrogatories to Monsanto and the "Final Report; Cerro Copper

Products; Removal of Contaminated Creek Sediment at Dead Creek

Segment A, Sauget, Illinois (June 17, 1991)" which was written on

behalf of Cerro by the Avendt Group, Inc. ("Avendt"). In the

last five months, Monsanto has used the definition of "Hazardous

Substance" agreed upon on August 18th to review in excess of one

million pages of documents and interview numerous individuals.

Monsanto therefore requested the definition of the term
"Hazardous Substances" agreed upon at the August 18, 1993 good
faith conference also be used to define the term "Hazardous
Substances" as it is used in the notices. Cerro refused to agree

to limit the term "Hazardous Substances" as it was limited during the August 12, 1993 conference. Rather, Cerro attempted to expand the definition of "Hazardous Substance" (see Nolan's February 3, 1994 letter attached hereto as Exhibit C) to include substances not listed in Avendt's Final Report or Avendt's June, 1990 Site Investigation/Feasibility Study for Creek Segment A ("SI/FS"), which the Final Report summarized. In light of Avendt's findings and the fact that Monsanto has utilized the definition of Hazardous Substance agreed upon by counsel on August 18, 1993 to review documents and answer all discovery to date, Cerro's attempt to now expand the definition of Hazardous Substance to include irrelevant substances that were not even detected in Dead Creek Segment A is inappropriate.

Pursuant to the Notice, Monsanto can produce one or more individuals with general knowledge of environmental investigations and/or studies at the W.G. Krummrich Plant concerning "Hazardous Substances" as that term was defined during the August 18, 1993 good faith conference. The time period encompassed would be the time period of the memory of the individual(s) produced to be deposed.

Cerro's Notice requesting Monsanto's deposition on February 25 requests Monsanto to produce one or more individuals to testify concerning:

The storage, treatment, and/or disposal of polychlorinated biphenyls (PCBs) at the W.G. Krummrich Plant from other Monsanto facilities and/or from the facilities of third parties.

Monsanto is attempting to locate one or more individuals with general knowledge of the storage, treatment, and/or disposal of PCBs at the W.G. Krummrich Plant. The time period encompassed would be the time period of the memory of the individual(s) produced to be deposed.

CONCLUSION

For the foregoing reasons, Monsanto respectfully moves this Court enter a Protective Order rescheduling Monsanto's depositions and properly limiting the subject matters of Cerro's Notices.

Respectfully submitted,

COBURN & CROFT

y: //

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Bruce D. Ryder

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St. Louis, MO 63101

(314) 621-8575

Attorneys for Defendant Monsanto Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing to be mailed, first class postage prepaid this 1976 day of February, 1994, to:

Alan C. Kohn, Esq.
Rebecca Stith, Esq.
Kohn, Shands, Elbert, Gianoulakis & Giljum
One Mercantile Center, 24th Floor
St. Louis, MO 63101

John M. Nolan, Esq.
Lowenstein, Sandler, Kohl, Fisher & Boylan
600 First Avenue
Raritan, NJ 08869-1308

-11-



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314 621-8575

618 277-1020

314 621-2989 FAX

REPLY TO SAINT LOUIS OFFICE

February 11, 1994



John M. Nolan, Esq. Lowenstein, Sandler, Kohl, Fisher & Boylan 600 First Avenue Raritan, NJ 08869-1308

By Fax and U.S. Mail

Re: Cerro Copper Products Company v. Monsanto Company

Dear Mr. Nolan:

We have completed a review of the documents "produced" to Monsanto at Cerro Copper's Sauget facility. We have identified the very few responsive documents and have marked them for copying. The only matter not completed with respect to this production is a review of the microfilm. We are currently arranging with Joe Grana to review this material.

We were disturbed and disappointed that the vast majority of "potentially responsive" documents that you produced to us contained nothing even remotely responsive to our requests. of the six walls of file cabinets, we identified at most one and one half boxes full of responsive documents. To gather this smattering of responsive material, we spent several days wading through thousands of non-responsive documents. Monsanto has made every effort to produce responsive documents to Cerro as expeditiously as possible. It seems that Cerro has not returned the favor.

In addition to being forced to review the great number of non-responsive documents "produced" to Monsanto, we also have concerns about some documents that were not produced to us. Enclosed please find a list of department codes with which we were provided when we undertook the review of the "six walls of file cabinets" at Cerro's Sauget facility. Below is a list of the file numbers from that list that were represented on divider markers in the file cabinets but for which there were no documents. With respect to these empty files, please indicate why they were created and whether there were ever any documents in these files. If there were documents in these files at one time, please produce them for our inspection and copying as soon as possible. If the documents that were in those files have been destroyed, please indicate when, why, and by whom.



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Please also indicate the names of any Cerro personnel who would have knowledge of the destroyed documents.

Department codes containing no documents:

Reference Number	File Name
1100	Plant Engineering
1106	Sewers
1400	Industrial Engineering
1800	Quality Control
2110	Offices
2214	Cranes
2212	Buildings & Grounds
300	Drayage
3012	Buildings & Grounds
3360	Stripper Cells
3363	Cathode Shearing
3453	Slimes Shipping
4000	Foundry Sup. & Staff
4112	Buildings & Grounds
4119	Briquetting (Chips)
4122	Pollution Control
4503	Compressed Air
4505	Power Distribution - elect.
4700	Shaft Furnace
4704	Wells & Reservoirs
4710	Offices
4711	Locker Rooms & Toilets
4712	Buildings & Grounds
4716	Conveyors
4721	Casting
4812	Buildings & Grounds
4820	Melting
4822	Pollution Control
5010	Offices
5011	Locker Rooms & Toilets
5110	Offices
5114	Cranes
5132	Rotoblock
5305	Power Distribution-electric.
5314	Cranes
5344	Coiling - level wound
5404	Wells & Reservoirs

John M. Nolan, Esq. February 11, 1994 Page 3

Reference Number	File Name
5405	Power Distribution-electric.
5414	Cranes
5448	Weighing
5451	Inspection
5452	Packing
5500	Brass Mill Drawing
5503	Compressed Air
5511	Lock Rooms & Toilets
5540	Pointing
5541	Sawing
5542	Straightening
5600	Brass Mill Finishing
5740	Pointing
5741	Sawing
5742	Straightening
5804	Wells & Reservoirs
5812	Buildings & Grounds
5841	Sawing
5910	Offices
5911	Locker Rooms & Toilets
5914	Cranes
5948	Weighing
6000	3-1/2" Tube Dept.
6100	Billet Heating & Extrusion
6102	Steam & Boiler
6103	Compressed Air
6141	Sawing
6202	Steam & Boiler
6203	Compressed Air
6205	Power Distribution-electric
6208	Clean Up
6210	Offices
6211	Locker Rooms & Toilets
6240	Pointing
6243	Coiling-Standard Package
6246	Testing
6250	Annealing
6252	Packing
6263	Shearing
0200	Diloutany

John M. Nolan, Esq. February 11, 1994 Page 4

Cerro also produced some "Raw Material Analysis" notebooks. These were dated as follows:

November 3, 1976 through June 9, 1978
June 9, 1978 through December 7, 1979
December 10, 1979 through January 29, 1982
January 29, 1982 through September 20, 1983
December 1, 1986 through January 11, 1988
January 11, 1988 through January 20, 1989
January 12, 1990 through December 7, 1990
December 10, 1990 through December 28, 1990.

There were no Raw Material Analysis notebooks for the period dated September 21, 1983 through November 30, 1986 or for the period dated January 21, 1989 through January 11, 1990. Monsanto is particularly troubled by the absence of the notebook containing the 1989 data. In regard to both gaps in the Raw Material Analysis notebooks, please indicate why they were not produced. If it is Cerro's position that they were not produced because they were destroyed, please indicate who destroyed the notebooks, why, and when. Please also indicate the person(s) in charge of compiling these notebooks.

Thank you in advance for your prompt attention to these matters.

Very truly yours,

Stacey L. Stater

SLS/cs

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	5508	Clean Up
	5511	Locker Rooms & Toilets
	5512	Buildings & Grounds
	- 5513	Tractors
	5514	Cranes
•	5530	Bench Drawing
	5531	Bull Block Drawing
	5540	Pointing
	5541	Saving
	5542	Straightening
	5547	Cleaning (Product)
	55 49	Marking
	5550	Annealing
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	3337	Inspection
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	5613 5614	Tractors
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	5642	Straightening
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	5647	Cleaning (Product)
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	5 651	Inspection
_	5 652	Packing
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	5702	Steam & Boiler
	5703	Compressed Air
	5705	Power Distribution - Electrical
	5708	Clean Up
	5711	Locker Rooms & Toilets
	5712	Buildings & Grounds
	5713	Tractors
	5714	Cranes
	5716	Conveyors
	57 27	Billet Heating
	5729	Extrusion #2
	5730	Pench Drawing
	5740	Pointing
	5741	Saving
	5742	Straightening
	5747	Cleaning (Product)
	5749	Marking
	5751	Inspection
	5752	Packing
9	5800	8" Tube Department - Bldg. #80
	5802	Steam & Boiler
	58 03	Compressed Air
	5804	Wells & Reservoirs
	58 05	Power Distribution - Electrical
	5808	Clean Up
	5812	Buildings & Grounds
	5813	Tractors
	5814	Cranes
	5827	Billet Heating
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	5849	Marking
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5901	Receiving
5902	Steam & Boiler
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5908	Clean Up
5910	Offices
5911	Locker Rooms & Toilets
5912	Buildings & Grounds
5913	Tractors
5914	Cranes
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5953	Shipping
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6100	Billet Heating & Extrusion
6102	Steam & Boiler
6103	Compressed Air
6104	Wells & Reservoirs
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6105	Power Distribution - Electrical
6108	Clean Up
6110	Offices .
6112	Buildings & Grounds
6113	Tractors
6114	Cranes
6116	Conveyors
6127	Billet Heating
6128	Piercing & Scalping
6129	Extrusion
6141	Saving
6151	Inspection
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6200	Thin Wall Production
6202	Steam & Boiler
6203	Compressed Air
6204	Wells & Reservoirs
6205	Power Distribution - Electrical
620 8	Clean Up
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6239	Tube bending
6240	Pointing
6241	Saving
6242	Straightening
6243	Coiling - Standard Package
6244	Coiling - Level Wound
6246	Testing
6247	Cleaning
6248	Weighing
6249	Marking
6250	Annealing
6251	Inspection
6252	Packing
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REPLY TO SAINT LOUIS OFFICE

February 9, 1994

VIA FACSIMILE AND U.S. MAIL

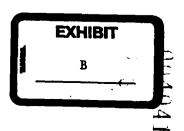
John M. Nolan, Esq. Lowenstein, Sandler, Kohl, Fisher & Boylan 600 First Avenue Raritan, NJ 08869-1308

Re: Cerro Copper Products v. Monsanto Company

Dear Mr. Nolan:

Pursuant to our two telephone conversations on February 7, 1994, it is my understanding that Cerro rejects Monsanto's request that Cerro move the dates and in some fashion limit its four Rule 30(b)(6) Notices of Deposition ("Notices") directed to Monsanto and scheduled for February 16, 17, 24, and 25 respectively. Despite the fact that Monsanto is still in the process of producing documents responsive to Cerro's extensive document production requests and it appears that Cerro has failed to fully produce several categories of responsive documents, you indicated that Cerro is insisting on proceeding with the depositions as scheduled. As I stated during our telephone conversation, Monsanto believes that Cerro's wish to take depositions of Monsanto at this point in the discovery process is not in anyone's best interest because it will result in such depositions having to be repeated following the production of additional documents.

Rule 30(b)(6) of the Federal Rules requires Cerro to "describe with reasonable particularity the matters on which examination is requested." Despite Cerro's obligation to describe potential deponents with "reasonable particularity", Cerro's Notices request testimony from individuals concerning matters not at issue in this litigation for a period of time in excess of 80 years. Despite the fact that there is nothing "reasonable" or "particular" about the descriptions set forth in the Notices, Cerro specifically rejected Monsanto's request for a reciprocal agreement between counsel to provide copies of deposition exhibits to the corporate deponent at the time of service of any Rule 30(b)(6) Notices as a means of limiting such Notices.



John M. Nolan, Esq. February 9, 1994
Page 2

Monsanto is not under an obligation to guess the particular subjects Cerro wishes to cover in its depositions. Nevertheless, Monsanto offers yet another set of reasonable limitations to Cerro's Notices. Cerro's Notice requesting Monsanto's deposition on February 16 requests Monsanto to produce one or more individuals to testify concerning:

The manufacturing processes utilized by Monsanto at the W.G. Krummrich Plant for the period 1917 through 1990, including but not limited to the identity of the products that were manufactured, how these products were manufactured, the volume, amount, and identity of raw materials utilized in the manufacture of these products, and the volume and amount of finished product.

This designation is impossibly vague and overbroad. First, it covers manufacturing processes that did not involve any substances similar to those found in Dead Creek. Monsanto has produced over 21,000 pages of Standard Manufacturing Process documents that did involve those substances. Some of those documents date back more than fifty years. No one living today is knowledgeable concerning many of these processes beyond what can be read in those documents. Pursuant to agreement between counsel, Monsanto has also produced summary documents that set forth recent volumes and amounts of raw materials used and products generated; again, we have no information concerning those subjects beyond what is contained in those documents. Nevertheless, Monsanto is willing to produce one or more individuals with general knowledge of Monsanto's recent manufacturing processes. The time period encompassed would be the time period of the memory of the individual(s) produced for deposition.

Cerro's Notice requesting Monsanto's deposition on February 17 requests Monsanto to produce one or more individuals to testify concerning:

The design and operation of the combined sewer system at the W.G. Krummrich Plant and the 36" overflow pipe that led from Monsanto to Dead Creek Segment A.

Counsel for both parties have agreed to use the term "combined sewer system" to mean the Village of Sauget's sewer system which runs north of Dead Creek Segment A and receives effluent from

John M. Nolan, Esq. February 9, 1994
Page 4

The storage, treatment, and/or disposal of polychlorinated biphenyls (PCBs) at the W.G. Krummrich Plant from other Monsanto facilities and/or from the facilities of third parties.

Monsanto is attempting to locate one or more individuals with general knowledge of the storage, treatment, and/or disposal of PCBs at the W.G. Krummrich Plant. The time period encompassed would be the time period of the memory of the individual(s) produced to be deposed.

As I was drafting this letter, I received by facsimile your two letters dated February 9, 1994. I note your complaint concerning the piecemeal production of documents by Monsanto. The piecemeal production was necessitated by your insistence on reviewing the documents available for production as soon as possible. Monsanto attorneys and staff have reviewed hundreds of thousands of pages of documents, in the midst of a major reorganization of the Krummrich Plant, to make sure that only responsive documents are produced. This process has obviously taken a considerable amount of time. Monsanto will make additional documents available for Cerro's review on Monday, February 21, 1994. I would also note that Cerro's production of documents also occurred in a piecemeal fashion, but with Monsanto's counsel being forced to wade through thousands of nonresponsive documents in order to single out the few responsive documents.

I note with some amazement your comment that Monsanto's "recent assertions regarding the Rule 30(b)(6) depositions . . . makes it clear that Monsanto's prime objective in this litigation is to hinder and delay Cerro's ability to obtain relevant discovery." This statement stands in marked contrast to your statements during our phone conversations wherein you stated that while your superiors may object to Monsanto's positions and offers of compromise regarding the 30(b)(6) depositions, you understood Monsanto's positions and thought that such positions were reasonable.

Monsanto stands ready to reschedule the depositions and come to an agreement with regard to reasonably limiting the Notices. Please accept our February 7 telephone conversations and this letter as Monsanto's good faith effort to settle this discovery

John M. Nolan, Esq. February 9, 1994 Page 5

dispute pursuant to Rule 12(c) of the Local Rules of the United States District Court for the Southern District of Illinois.

Very truly yours,

Goseph M. Kellmeyer

JMK/ddc

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ROSELAND OFFICE

TELEPHONE (201) 992-8700 FACSIMILE (201) 992-5820

February 3, 1994

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*NY BAR ONLY

VIA TELECOPY

Joseph M. Kellmeyer, Esq. Coburn & Croft One Mercantile Center - Suite 2900 St. Louis, Missouri 63101

Re: Cerro Copper Products Co. v. Monsanto Company

Dear Mr. Kellmeyer:

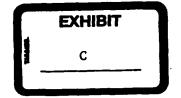
In reviewing various documents and reports in connection with the above-captioned matter, it appears clear that the previously proposed definition of "Hazardous Substances" is Although all metals found in Dead Creek Segment A (the incomplete. "Creek") were included in the previous list, PCBs and PCB Precursors, which have always been a major component of this case, In addition, an incomplete listing of Volatile were not listed. and Semi-volatile Organics was set forth.

Thus, the term "Hazardous Substances" should reflect all hazardous substances found in the Creek, as set forth in the Site Investigation/Feasibility Study ("SI/FS"), and should include:

A. **PCBs**

- 1. Aroclor 1016
- Aroclor 1221 2.
- Aroclor 1232 3.

THIS IS ORIGINAL OF FAX SENT 13/24 TO YOU ON ...



- 4. Aroclor 1242
- 5. Aroclor 1248
- 6. Aroclor 1254
- 7. Aroclor 1260

B. PCB Precursors

- 1. Biphenyl
- 2. Chlorobiphenyl
- 3. Dichlorobiphenyl
- 4. Trichlorobiphenyl
- 5. Tetrachlorobiphenyl
- 6. Pentachlorobiphenyl
- 7. Hexachlorobiphenyl
- 8. Decachlorobiphenyl

C. <u>Volatile Organics</u>

- 1. Bromomethane
- 2. Methylene Chloride
- 3. Acetone
- 4. 1,1 Dichloroethane
- 5. 1,2 Dichloroethane
- 6. 2-Butanone
- 7. Trichloroethene
- 8. Benzene
- 9. Tetrachloroethene
- 10. 1,1,2,2-Tetrachloroethane
- 11. Toluene

- 12. Chlorobenzene
- 13. Ethylbenzene
- 14. Xylene
- 15. Dichlorodifluoromethane
- 16. Idomethane

D. Semi-volatile Organics

- 1. Phenol
- 2. 1,3 Dichlorobenzene
- 3. 1,4 Dichlorobenzene
- 4. Benzyl Alcohol
- 5. 1,2 Dichlorobenzene
- 2-Methylphenol
- 4-Methylphenol
- 8. 2,4 Dimethylphenol
- 9. Benzoic Acid
- 10. 1,2,4-Trichlorobenzene
- 11. Naphthalene
- 12. Chloroamiline
- 13. 2-Methylnaphthalene
- 14. Aniline
- 15. 3-Methylphenol
- 16. Acetophenone
- 17. 1,2,4,5 Tetrachlorobenzene
- 18. Pentachlorobenzene
- 19. Fluorene

- 20. N-Nitrosodiphenylamine(1)
- 21. Hexachlorobenzene
- 22. Pentachlorophenol
- 23. Phenanthrene
- 24. Di-N-Butylphthalate
- 25. Fluoranthene
- 26. Pyrene
- 27. Butylbenzylphthalate
- 28. Chrysene
- 29. Bis (2-Ethylhexyl) Phthalate
- 30. Bi-n-octyl Phthalate
- 31. 2,3,4,6-Tetrachlorophenol
- 32. Diphenylamine

E. Metals

- 1. Aluminum
- 2. Antimony
- 3. Arsenic
- 4. Barium
- 5. Beryllium
- 6. Boron
- 7. Cadmium
- 8. Chromium
- 9. Cobalt
- 10. Copper
- 11. Iron

- 12. Lead
- 13. Manganese
- 14. Mercury
- 15. Nickel
- 16. Selenium
- 17. Silver
- 18. Thallium
- 19. Tin
- 20. Vanadium
- 21. Zinc

As you may recall, Cerro has previously requested that Monsanto amend its answer to Interrogatory No. 3, in Cerro's First Set of Interrogatories, to state whether PCBs and PCB Precursors were present at the W.G. Krummrich Plant. Cerro hereby requests that Monsanto also address the presence of the additional Volatile and Semi-volatile Organics that were found in Dead Creek Segment A, as set forth in the SI/FS, and that are included on the revised list. Those substances are:

Volatile Organics:

Bromomethane

1,1 Dichloroethane

2-Butanone

Benzene

Tetrachloroethene

1,1,2,2-Tetrachloroethane

Idomethane; and

Semi-Volatile Organics:

2-Methylphenol

Naphthalene

2-Methylnaphthalene

Aniline

Fluorene

N-Nitrosodiphenylamine(1)

Hexachlorobenzene

Pentachlorophenol

Phenanthrene

Di-N-Butylphthalate

Fluoranthene

Pyrene

Chrysene

Bi-n-octyl Phthalate

2,3,4,6-Tetrachlorophenol

Diphenylamine.

Very truly yours,

John M. Nolan

JMN/aj 020394JMNL-Kell3